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STATE FOR WHA/CEN GSCHIFFER, EB/IFD/OIA, L/CID AND WHA/EPSC
TREASURY FOR INL MDONOVAN AND GCHRISTOPOLUS, OWH/ASCHWARTZMAN
STATE PASS TO USTR

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SUBJECT: NICARAGUA: NICARAGUA'S COASTAL LAND LEGISLATION

¶1. (SBU) SUMMARY: In the last decade, there has been a significant increase in Nicaraguan beachfront property investments, including many investments by American citizens. Land laws do not discriminate between foreign and domestic owners, but investor uncertainty in the face of a history of tangled land tenure and questionable leasing and sub-leasing practices suggests the need for clarity in legislation. A recent effort to regulate beachfront property, known as the Coastal Bill (Ley de Costas), was defeated in the National Assembly in mid 2006 after intense lobbying by the tourism and construction sectors. Although no revised bill is likely to pass soon, the National Assembly continues to debate issues related to coastal law. END SUMMARY.

¶2. (U) In the last decade, there has been a significant increase in Nicaraguan beachfront property investments, including many investments by American citizens. Contributing to what some labeled "a boom" during the past few years has been a major increase in property values in neighboring Costa Rica; Nicaraguan land prices seem attractively low by comparison. Most investments and developments have centered around Tola and San Juan del Sur in the southern Pacific Department of Rivas.

¶3. (SBU) Property investment in Nicaragua has been far from worry free. A history of tangled land tenure was exacerbated by the 1980s Sandinista-era confiscations, subsequent land invasions, and competing legal claims in the 1990s and new millennium. Complicating the situation has been more than a century of improper mapping, registration irregularities, as well as a variety of leasing anomalies. Accusations of wrongful behavior in real estate transactions are rife; corrupt municipal officials only make matters worse. The result is a climate of insecurity for the average U.S. investor.

What the Law Says

¶4. (U) The 1917 Agrarian Law is the primary legislation governing beachfront property ownership. All titles and leases issued after that date abide by this law. The legislation states that property situated within two kilometers of an ocean and/or 800 meters from a lake or river, that was not privately owned in 1917 (verified by a registered title), belongs to the state and cannot be sold. Common practice is to measure distances from the high tide mark. For the San Juan River and protected areas, such as natural parks, the limit is 3,500 meters. As no laws are retroactive in Nicaragua, all titles issued prior to 1917 were unaffected. They are, therefore, perfectly valid and can be sold without restriction. In addition to the 1917 Agrarian law, municipal laws proscribe construction located

within the first 100 meters from high tide. There is no difference in the treatment of foreigners or locals when it comes to land ownership or leases.

¶5. (U) Municipalities are responsible for managing land assigned to the state by the 1917 Agrarian Law. Private parties may contract land use leases via grants that are available for up to 99 years. This represents the conventional means of gaining possession of the land. The leases constitute a legally binding contract between an individual and the municipality. Any construction on the property belongs to the party responsible for building it. The lease and improvements on the land can be registered in the local Public Registry for Real Estate Property to provide more legal certainty. Sub-leasing is prohibited by Nicaraguan law, unless approved by the landlord. Therefore, legal transfers from one investor to another require a reassignment of rights (Cesión de Derechos) in which all lease rights are transferred to the new investor. One of the main problems in dealing with municipalities has been corruption. For a price, some municipal officials will issue multiple leases on the same property, and illegally create municipal leases for land titled before 1917.

New Regulations

¶6. (U) The most recent effort to regulate beachfront property is the Coastal Bill (Ley de Costas) introduced to the National Assembly in 2005. This legislation would have increased the prohibition on construction from 100 meters to 200 meters at high tide. Lease terms would be limited to a maximum of 25 years, instead of 99 years, and there would be no automatic renewals. After strenuous lobbying by tourism and construction companies, voting on the bill in the National Assembly was postponed in mid-2006 until further notice.

¶7. (U) The idea of a comprehensive law regulating coastal lands has resurfaced in recent months as a reaction against private developers fencing in large tracts of beachfront land to obstruct public access. The Nicaraguan constitution states that all beaches should be open to the public. Although no revised bill is likely to pass soon, the National Assembly continues to debate issues related to coastal law.

Comment

¶7. (SBU) Given U.S. and foreign investment along the coast, especially for vacation homes, a new coastal law will likely attract considerable attention overseas. While clarification of the law governing coastal lands is needed, there is no guarantee that new legislation will fulfill this purpose. It may well be that, as has often been the case in Nicaragua, party politics and personal interests will determine the essential content of the law.

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